

<p style="text-align: right;">Page 142</p> <p>1 Q. You just did it wrong there. It went slightly</p> <p>2 less negative in 2010. Slightly less negative in 2011.</p> <p>3 Slightly less negative in 2012. That's the trend as far</p> <p>4 as earning goes. It doesn't jump back up, does it?</p> <p>5 MR. RAMSEY: Form. Are you testifying,</p> <p>6 Brian, or are you asking him the question?</p> <p>7 A. I am looking at the bouncing around. It's</p> <p>8 bouncing.</p> <p>9 Q. Do you see that revenue?</p> <p>10 A. I see it. Do you see it? You're trying to</p> <p>11 assess a trend here. I don't see a trend.</p> <p>12 Q. Do you see revenue is essentially flat from</p> <p>13 2010, 2011 and 2012 right around 36.5 million dollars?</p> <p>14 A. Here is what I see. I see that the beginning</p> <p>15 of this series looks like the end of the series. That's</p> <p>16 what I see.</p> <p>17 Q. So you would predict based on this that in</p> <p>18 2013 there would be another huge loss like after 2008?</p> <p>19 Is that what you're saying?</p> <p>20 MR. RAMSEY: Form.</p> <p>21 A. No. I said what I said. I am looking at what</p> <p>22 the profitability looks like in 2007 and 2008. That</p> <p>23 looks awfully similar to what happened in 2011 and 2012.</p> <p>24 So where is the trend?</p> <p>25 Q. Do you think that the Yellow Tail was going to</p>	<p style="text-align: right;">Page 144</p> <p>1 A. Yes.</p> <p>2 Q. Did you rely on that in any way?</p> <p>3 A. No.</p> <p>4 Q. Did you make any attempt to asses whether that</p> <p>5 the information to provided to that court was accurate?</p> <p>6 A. No. I mean only to the extent that I am doing a</p> <p>7 valuation with regard to Pole-Bridge Bowman, which the</p> <p>8 court relied on.</p> <p>9 Q. And do you know if the court actually relied on</p> <p>10 anything?</p> <p>11 A. I thought so. I may be mistaken, but thought</p> <p>12 the transaction was the key factor that the court used.</p> <p>13 Q. It was disclosed to the court. But did you see</p> <p>14 anything indicating that the court actually looked at the</p> <p>15 papers given that it was uncontested?</p> <p>16 MR. RAMSEY: Form.</p> <p>17 A. Maybe if you show me the document, I can</p> <p>18 refresh my recollection. Sitting here today, I don't</p> <p>19 remember.</p> <p>20 Q. Do you remember that action was not contested?</p> <p>21 A. I don't remember.</p> <p>22 Q. In terms of what was submitted to that court,</p> <p>23 did you consider the description that Lester Eber gave to</p> <p>24 the court of what Eber-Metro was worth in your analysis?</p> <p>25 MR. RAMSEY: Form.</p>
<p style="text-align: right;">Page 143</p> <p>1 dual them again?</p> <p>2 A. Yellow Tail went out in 2009. That's what you</p> <p>3 just told me.</p> <p>4 Q. So past event couldn't reoccur, right?</p> <p>5 MR. RAMSEY: Form.</p> <p>6 A. Whether it could occur with another wine, I</p> <p>7 don't know.</p> <p>8 Q. Do you know whether Yellow Tail --</p> <p>9 A. I am looking at these numbers and I don't see</p> <p>10 the trend that you see.</p> <p>11 Q. Okay. That's fine. And as part of your</p> <p>12 analysis you did not attempt to determine whether Lester</p> <p>13 and Wendy Eber were making changes in the business to</p> <p>14 improve profitability; is that right?</p> <p>15 MR. RAMSEY: Form.</p> <p>16 A. My analysis reflects and all these analysis</p> <p>17 reflects that there will be improvement in profits</p> <p>18 because it's positive equity value for Eber-Connecticut.</p> <p>19 So in all those scenarios, there is improvement in</p> <p>20 profit.</p> <p>21 Q. As part of your analysis you've reviewed the</p> <p>22 May 23, 2012 order of the court in which it declared that</p> <p>23 Alexbay's acceptance of Eber-Metro's stock in</p> <p>24 satisfaction of the debt was commercially reasonable,</p> <p>25 correct?</p>	<p style="text-align: right;">Page 145</p> <p>1 A. My valuation analysis is indicated in this</p> <p>2 report. I don't remember what Lester said when</p> <p>3 reflecting my valuation. So I would have to look at what</p> <p>4 he said. Maybe what he said is in there. I just don't</p> <p>5 know.</p> <p>6 Q. Okay. This is previously marked Exhibit 45.</p> <p>7 It's an affidavit from Lester Eber dated March 14, 2012.</p> <p>8 I am going to direct your attention specifically to</p> <p>9 Paragraph 6. Okay.</p> <p>10 A. If you don't mind, I am going to read the</p> <p>11 context of this.</p> <p>12 Q. Sure. Okay.</p> <p>13 A. Okay.</p> <p>14 Q. Have you seen this before today?</p> <p>15 A. I don't remember seeing this.</p> <p>16 Q. And is there any new information in there for</p> <p>17 you?</p> <p>18 A. I don't know if this is new. It is valuing</p> <p>19 Eber-Connecticut at 4.6 million.</p> <p>20 Q. And that's based on the Pole-Bridge Bowman</p> <p>21 transaction you understand, correct?</p> <p>22 A. It doesn't say that.</p> <p>23 Q. I guess it says very recent arm's-length sales</p> <p>24 on the open market. Do you think that's referring to</p> <p>25 Pole-Bridge Bowman?</p>

<p style="text-align: right;">Page 146</p> <p>1 MR. RAMSEY: Form.</p> <p>2 A. I don't know.</p> <p>3 Q. Is it your understanding that the Pole-Bridge</p> <p>4 Bowman transaction was conducted on the open market?</p> <p>5 A. I think by open market it means at fair market</p> <p>6 value. I don't know. I am not sure what open market</p> <p>7 means in this context. But does it say that Pole-Bridge</p> <p>8 Bowman is n here somewhere?</p> <p>9 Q. I am not sure it's in this document. I will</p> <p>10 represent to you another document filed by the lawyers</p> <p>11 reference only the Pole-Bridge Bowman transaction and did</p> <p>12 not reference any other transactions involving the</p> <p>13 company.</p> <p>14 A. Okay.</p> <p>15 Q. So I want to draw your attention in particular</p> <p>16 to the last line there. It says, "Because it,</p> <p>17 Eber-Connecticut, is Metro's only significant asset that</p> <p>18 79 percent interest valued 3.66 million itself</p> <p>19 establishes the value of Metro." So he didn't mention</p> <p>20 anything about any liabilities there, correct?</p> <p>21 A. No.</p> <p>22 Q. Do you know why that is?</p> <p>23 MR. RAMSEY: Form.</p> <p>24 A. No.</p> <p>25 Q. Do you consider this statement by the purchaser</p>	<p style="text-align: right;">Page 148</p> <p>1 doesn't -- no. It doesn't really affect my opinion.</p> <p>2 Q. Okay.</p> <p>3 A. Unless I am missing something.</p> <p>4 Q. If the transaction is engaged in for the</p> <p>5 purposes of shielding assets, doesn't that affect the</p> <p>6 probability that contingent liabilities would be assessed</p> <p>7 against it?</p> <p>8 MR. RAMSEY: Form.</p> <p>9 A. I think if that was the -- for example, if an</p> <p>10 investor -- let's hypothetically say Lester did that, it</p> <p>11 may affect his view -- specific investment view. But it</p> <p>12 doesn't affect, you know, what I think that a reasonable</p> <p>13 investor would assess in this particular instance.</p> <p>14 Q. So in your opinion, you think a reasonable</p> <p>15 investor would look at this transaction and think that it</p> <p>16 would not be a successful way of shielding Eber-Metro and</p> <p>17 its interest in Eber-Connecticut from the creditors of</p> <p>18 Eber Brothers Wine and Liquor Corp; is that right?</p> <p>19 A. I think that's fair.</p> <p>20 Q. Now, you have done a lot of corporate</p> <p>21 transactions and valuating them. Have you ever seen a</p> <p>22 transaction with the same general setup as this, where an</p> <p>23 officer or director of a company transfers it to himself</p> <p>24 on the grounds that he is a creditor foreclosing on a</p> <p>25 loan that he had given to the company?</p>
<p style="text-align: right;">Page 147</p> <p>1 of Eber-Metro about his understanding of its value to be</p> <p>2 relevant to your analysis?</p> <p>3 A. Well, it seems to be contradicted on its face</p> <p>4 anyways. It seems to contradict what I have been</p> <p>5 provided as a legal assumption. I don't know. I mean,</p> <p>6 you know, whether -- so this seems to be consistent with</p> <p>7 your legal definition as opposed to the legal definition</p> <p>8 that I was provided with. But it also seems to</p> <p>9 contradict what I said earlier, that an investor would</p> <p>10 certainly reflect those liabilities and any assessment of</p> <p>11 Eber-Metro. Best I can do with that.</p> <p>12 Q. And I think you may have answered this before,</p> <p>13 but I wanted to make sure I understand. In your opinion,</p> <p>14 the purpose that Lester Eber and Eber Wine and Liquor</p> <p>15 had for entering into this transaction doesn't affect</p> <p>16 your valuation analysis; is that right?</p> <p>17 A. The purpose?</p> <p>18 Q. Such if the purpose was to shield assets from</p> <p>19 creditors, would that affect your analysis?</p> <p>20 A. I mean it doesn't affect my solvency opinion.</p> <p>21 It doesn't affect my valuation the Eber-Connecticut.</p> <p>22 Those stand independent. Whether the trier of fact</p> <p>23 somehow because of what you say is true that they think</p> <p>24 this transaction should be undone accordingly -- that's</p> <p>25 really a finding that the court may or may not. But it</p>	<p style="text-align: right;">Page 149</p> <p>1 A. It's pretty specific facts.</p> <p>2 Q. We can open it to officer or director.</p> <p>3 A. Okay. I mean the best I can think of -- I have</p> <p>4 been involved in cases where the company has been taken</p> <p>5 private by officers or directors. And as I said, there</p> <p>6 has been cases in which in a transaction the common</p> <p>7 shareholders got nothing because of priority claims. But</p> <p>8 nothing is coming to my mind about a single case that</p> <p>9 contains all those facts.</p> <p>10 Q. Right. I think is it fair to say the</p> <p>11 distinguishing feature is how this company was acquired</p> <p>12 through a creditor foreclosure attempt as opposed to a</p> <p>13 more transparent sale or purchase?</p> <p>14 MR. RAMSEY: Form.</p> <p>15 A. So you're asking me if I have been involved in</p> <p>16 a case --</p> <p>17 Q. Let me step back. In those cases where</p> <p>18 management acquired the company, took it private and</p> <p>19 whatnot, is it fair to say there were a number of</p> <p>20 procedural protections that were involved to ensure that</p> <p>21 shareholders were not getting shafted?</p> <p>22 MR. RAMSEY: Form.</p> <p>23 MR. CALIHAN: Form.</p> <p>24 Q. Ensure that shareholders were not being taken</p> <p>25 advantage of?</p>